

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**COMPANY APPLICATION No. 293 of 2006****In****OFFICIAL LIQUIDATOR REPORT No. 18 of 2003****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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SHREE CORPORATION & 15 - Applicant(s)**Versus****O.L OF NAVJIVAN MILLS CO. LTD. - Respondent(s)**

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Appearance :

MR RS SANJANWALA for Applicant(s) : 1 - 16.

OFFICIAL LIQUIDATOR for Respondent(s) : 1,

MS AMEE YAJNIK for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 01/12/2006****ORAL JUDGMENT**

1. By way of this Judges Summons', the applicants
have prayed for an appropriate order restraining

the respondent i.e. Official Liquidator of Navjivan Mills Company Ltd. (in liquidation) from disturbing the possession and use of land area admeasuring 5744.42 sq mtr of land bearing City Survey No.3156 to 3173 of Moge Village Kalol, Dist:Gandhinagar as well as construction standing on the land presently in possession and occupation of the applicants.

2. It is the case on behalf of the applicants that all the applicants i.e. 16 persons are in possession and occupation of the land admeasuring 5744.42 sq mtr of land bearing city Survey No.3156 to 3173 of Village Kalol, Dist:Gandhinagar and the construction standing thereon. It is the case on behalf of the petitioner that the Official Liquidator has issued notices upon the applicants dated 05th June, 2006 alleging that the applicants are occupying the portion of the premises of the company without any lawful authority from its office which is causing hurdles in the liquidation proceedings of the company. By the said notice, applicants have been called upon to vacate the premises alleging unauthorized

occupation within 15 days from the date of the notice and to handover vacant and peaceful possession of the premises to him failing which he is proposed to initiate action to forcibly remove the applicants with police protection in order to proceed with the liquidation proceedings of the company, and, thereafter the present application has been filed.

3. It is the case of the petitioners that the aforesaid notices issued by the Official Liquidator are solely without jurisdiction and authority in law. It is submitted that they are permanent tenants of the land and the construction in question and the Official Liquidator has no authority to evict the applicants.

4. It is further submitted that in fact, entire property has been sold in a public auction and in favour of one Deep Estate and the sale in his favour has been confirmed and the said Deep Estate purchased the property on "as is where is and whatever there is" basis. And therefore, once the property has been sold the Official

Liquidator is not the in charge of the said property and therefore, he has no jurisdiction to issue such notice after the properties are sold and it is for the purchaser to take/initiate proceedings for getting the possession and/or evicting the applicants. Therefore, it is requested by the applicants to quash and set aside the impugned notices and restrain the Official Liquidator from taking any action pursuant to the said notice.

5. The application is opposed by the Official Liquidator. Reports are filed on behalf of the Official Liquidator opposing the present application and grant of any relief as prayed for. It is disputed that applicants have right to continue on the land in question. The alleged tenancy rights of the applicants are also disputed and it is submitted that no documentary evidences have been furnished in support of the claim of the applicants as tenants, and, therefore, it is requested to dismiss the present application.

6. Heard learned advocates appearing on behalf

of respective parties. It is not disputed by the learned advocate appearing on behalf of the Official Liquidator that the land/property occupied by the applicants are sold in favour of Deep Estate pursuant to the order passed by this Court in O.L.R. No.18 of 2003 for a sale consideration of Rs.4.67 Crores. It is also not disputed that the sale of the properties of the company was on "as is where is and whatever there is" basis. It appears that at the relevant time tenders were invited and the property was put to sale while the applicants were in occupation of the possession of the properties in question. Not only that, but, in the sale deed executed by the Official Liquidator in favor of the purchaser dated 20th April, 2005 itself there is a reference that 73,377.21 sq mtr of land is free hold land and about 5744.42 sq mtr is a permanent leasehold land. Thus, in all 79,121.63 sq mtr land with construction thereon came to be sold for Rs.4.67 Crores. The deed of conveyance was executed in favour of purchaser on 20th April, 2005. Therefore, on and after 20th April, 2005, Company (in liquidation) is not the owner of the land and the Official

Liquidator has nothing to do with the said property. Once the properties are sold in a winding up proceedings and the amount is realized and the possession is handed over to the purchaser who has purchased the properties on "as is where is and whatever there is" basis, the Official Liquidator loses the control over the said properties. It is ultimately for the subsequent purchaser to deal with and remove those persons from the property. In the present case, after the properties are sold and the sale deed has been executed on 20.04.2005, the impugned notices have been given by the Official Liquidator on 04.05..2006 much after the entire properties conveyed in favour of the Deep Estate.

7. Under the circumstances, the impugned notices dated 05th June, 2006 calling upon the applicants to handover the vacant peaceful possession of the property to the Official Liquidator, are without jurisdiction and authority under the law. Once the properties are sold and purchased by other person on " as is where is and whatever there is" basis, it is ultimately for the

subsequent purchaser to initiate the proceedings for getting the possession and/or vacating the person. However, the Official Liquidator has no jurisdiction.

8. In view of the above, without expressing any opinion on merits and deciding any question whether the applicants have right to continue on the properties in question and/or the possession occupied by the applicants is legal or not, solely on this ground the application stands allowed and the impugned notices require to be quashed and set aside. It will be open for the subsequent purchaser to initiate proceedings for getting the possession from the applicants and/or removing them and/or vacating possession from them in accordance with law. However, once the properties are sold in a public auction in winding up proceedings, the Official Liquidator has no jurisdiction thereafter to initiate any proceeding for getting possession of the properties which are already sold on "as is where is and whatever there is" basis.

9. Under the circumstances, with the above

observations and directions and keeping right open in favour of subsequent purchaser as stated above, this application is allowed. Impugned notices issued by the Official Liquidator dated 05th June, 2006 are hereby quashed and set aside. No order as to costs. Direct Service is permitted.

(M.R.SHAH, J.)

Amit/-